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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,557	11/28/2005	Bodo W. Lambertz	DD-25017	7025
7590 Olson & Cepuritis, Ltd. 36th Floor 20 North Wacker Drive Chicago, IL 60606			EXAMINER HOEY, ALISSA L	
			ART UNIT 3765	PAPER NUMBER
			MAIL DATE 04/18/2011	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/542,557

**Applicant(s)**

LAMBERTZ, BODO W.

**Examiner**

Alissa L. Hoey

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 February 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/18/11 has been entered.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 7 and 21-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), *at the time the application was filed*, had possession of the claimed invention. There is no support in the *originally filed* disclosure for the air channels being located on the sole of the sock along with the climate channels and central channel.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambertz (US 6,286,151).

Lambertz teaches the following in figure 1:

1. (Currently Amended) A sock (1) for use in athletic activities having a foot portion and a shaft portion (figure 1), the foot portion having a toe area, a heel area, and a tread area between the toe area and the heel area in the sole of the sock (see figure 1, the side view of the sock provides the lowermost portion as the sole of the sock), an air channel (3: see portion of 3 at the lower most end of the sock in figure 1) extending from the shaft portion and terminating in a wider portion in the tread area (figure 1), at least one climate channel (ribbed portion on instep; column 2, lines 4-13) in the tread area extending outwardly from (figure 1: see portion extending to the lower most end of the sock ) and communicating with the wider portion of the air channel (3) for removing moisture from the tread area when the sock is worn for athletic activities (figure 1).

2. (Currently Amended) A sock according to Claim 1, characterized in that at least one additional air channel (3, on opposite side of sock: column 1, lines 34-37) are is provided on the inside of the leg and/or on the outside of the leg of the sock, each air

channel being connected to at least one climate channel (ribbed portion) in the tread area (figure 1: ribbed portion extends to the sole of the sock on each side).

11. (Previously Presented) A sock according to Claim 1, characterized in that the sock is equipped with an X-cross bandage (9).

12. (Previously Presented) A sock according to Claim 1, characterized in that the sock has padding (5, 10, 11).

6. Claims 1, 2 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambertz (US 6,286,151).

Lambertz teaches the following in figure 8:

1. (Currently Amended) A sock (1) for use in athletic activities having a foot portion and a shaft portion, the foot portion having a toe area, a heel area, and a tread area between the toe area and the heel area in the sole of the sock (figure 8: lowermost portion is the sole of the sock), an air channel (3) extending from the shaft portion and terminating in a wider portion in the tread area (figure 8), at least one climate channel (ribbed portion of the instep: column 2, lines 4-13) in the tread area extending outwardly from and, communicating with the wider portion of the air channel (3) for removing moisture from the tread area when the sock is worn for athletic activities (figure 8).

2. (Currently Amended) A sock according to Claim 1, characterized in that at least one additional air channel (14) are provided on the inside of the leg and/or on

the outside of the leg of the sock, each air channel being connected to at least one climate channel (ribbed portion of the instep) in the tread area (figure 8).

9. (Previously Presented) A sock according to Claim 2, characterized in that the air channel (3) is made of a climate-regulating mesh knit fabric (column 1, lines 26-37).

7. Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambertz (US 6,286,151).

Lambertz teaches the following in figure 8:

1. (Currently Amended) A sock (1) for use in athletic activities having a foot portion and a shaft portion, the foot portion having a toe area, a heel area, and a tread area between the toe area and the heel area in the sole of the sock (figure 8), an air channel (14) extending from the shaft portion and terminating in a wider portion in the tread area (figure 8), at least one climate channel (3) in the tread area extending outwardly from and communicating with the air channel (14) for removing moisture from the tread area when the sock is worn for athletic activities (figure 8).

10. (Previously Presented) A sock according to Claim 1, characterized in that the climate channel (3) is made of climate-regulating mesh knit fabric (column 1, lines 26-37).

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1-9, 11-17 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogden (US 5,708,985) in view of Lambertz (US 6,286,151).

In regard to claim 1, Ogden teaches a sock (10) for use in athletic activities having a foot portion and a shaft portion, the foot portion having a toe area, a heel area, and a tread area between the toe area and the heel area in the sole of the sock (figures 1-5), at least one climate channel (36, 22) in the tread area (figures 1-5) for removing moisture from the tread area when the sock is worn for athletic activities (see figures 1-5).

However, Ogden fails to teach an air channel extending from the shaft portion and terminating in a wider portion in the tread area.

Lambertz teaches an air channel (3) extending from the shaft portion and terminating in a wider portion in the tread area, which would correspond to the at least one climate channel to further assist in remove moisture from the user's foot.

It would have been obvious to have provided the sock of Ogden with the air channel of Lambertz, since the sock of Ogden provided with an air channel would provide a sock that allows for even greater breathability and wicking of moisture away from the user's foot.

In regard to claim 2, Lambertz teaches that at least one additional air channel (3) is provided on the inside of the leg and/or on the outside of the leg of the sock (column

1, lines 34-37). Each air channel (3) of Lambertz being connected to at least one climate channel (36, 22) in the tread area of Ogden (see figures 1-5).

In regard to claim 3, Ogden teaches the climate channels (36, 22) have a curved shape in the tread area (figures 2, 3 and 5).

In regard to claim 4, Ogden teaches the climate channels (36, 22) extending from have a curved shape in the tread area (figures 2 and 3).

In regard to claim 5, Ogden teaches the climate channels (36, 22) extending from are partially tapered (figures 2, 3 and 5).

In regard to claims 6, 15, 16 and 17, Ogden teaches the climate channels (36, 22) have an essentially circular cross section, but for a gap in the circular cross-section that can narrow under load to form a closed channel, facilitating air flow through the climate channel (figures 4A-4C).

In regard to claim 7, Ogden teaches the climate channels (36', 52) are connected to one another through a central channel (central channel of 50 in figure 5).

In regard to claim 8, Lambertz teaches air channels (3: column 1, lines 34-37) and the climate channels are made of the same material (column 1, lines 26-37).

In regard to claim 9, Lambertz teaches the air channel (3) is made of a climate-regulating mesh knit fabric (column 3, lines 32-45).

In regard to claim 11, Lambertz teaches the sock equipped with an X-cross bandage (figure 1, identifier 9).

In regard to claim 12, Ogden teaches the sock has padding (56, 54).



In regard to claim 13, Ogden teaches the climate channels (22, 36) are partially tapered (figures 1, 2, 3 and 5).

In regard to claim 14, Ogden teaches the climate channels (36, 22) are partially tapered (figures 1, 2 and 5).

In regard to claim 21, Ogden teaches a sock (10) for use in athletic activities having a foot portion and a shaft portion, the foot portion having a toe area a heel area, and a tread area between the toe area (figures 1-5) and the heel area in the sole of the sock, at least one climate channel (36') in the tread area (figure 5), for removing moisture from the tread area when the sock is worn for athletic activities and further including a plurality of climate channels (36') in the tread area (figure 5), the climate channels being connected to one another through a central channel (channel: 50) arranged along the longitudinal central axis of the tread area, the climate channels branching off from the central channel (figure 5).

However, Ogden fails to teach an air channel extending from the shaft portion and terminating in a wider portion in the tread area.

Lambertz teaches an air channel (3) extending from the shaft portion and terminating in a wider portion in the tread area, which would corresponding to the at least one climate channel to further assists in remove moisture from the user's foot.

It would have been obvious to have provided the sock of Ogden with the air channel of Lambertz, since the sock of Ogden provided with an air channel would provide a sock that allows for even greater breathability and wicking of moisture away from the user's foot.

In regard to claim 22, Ogden teaches the climate channels (36') are curved and branch off on both sides of the central channel (channel: 50) and extend from the central channel to the outside edge of the tread area (figure 5, side portions).

In regard to claim 23, Ogden teaches the climate channels (36') have an essentially circular cross section, but for a gap in the circular cross-section that can narrow under load to form a closed channel, facilitating air flow through the climate channel (figures 4A-4C).

### ***Response to Arguments***

10. Applicant's arguments filed 02/18/11 have been fully considered but they are not persuasive.

I) Applicant argues that claim 1 should not be rejected under 112 1<sup>st</sup> paragraph new matter situation.

Claim 1 was not rejected under 112 1<sup>st</sup> paragraph in office action of 08/18/10 or in the current office action. Therefore, the arguments with respect to claim 1 are moot.

II) Applicant argues that claims 7 and 21-23 should not be rejected under 112 1<sup>st</sup> paragraph, because the specification and drawings have been amended to show the air channel extending into the tread area of the sock.

Examiner notes that the embodiment of figure 7 as originally disclosed and illustrated, does not provide support for the climate channel, the air channel and the

central channel all being located in the tread area. Applicant argues that different embodiments and the current amendment to figure 7 teaches the climate, air and central channel being in the tread area. The current amendments to figure 7 and the specification do teach this, but the amendments are considered new matter not originally disclosed. The other embodiments (figures 8-10) where the air channel is present in the tread area of the sock does not teach the climate channel and the central channel also in the tread area. If the air channel was to be located in the tread area of the sock, it would have been illustrated and disclosed as properly shown in the embodiments of figures 8-10. A continuation-in-part application would be an option to introduce the tread area having the climate channel, the air channel and the central channel.

III) Applicant argues that Lambertz does not anticipate the invention or disclose separate and distinct climate channels extending outward from the air channel in the tread region of the sock.

Examiner notes that the above argued limitation is not found in claims 1, 2 and 9-12. Lambertz teaches a climate channel (5) and an air channel (3). The climate channel (5) and the air channel (3) correspond to the instep portion as illustrated in figure 1. The bottom of the instep portion is the tread area (see figure 1). Therefore, Lambertz teaches the limitations as claimed in 1, 2, and 9-12.

IV) Applicant argues that Ogden fails to teach the climate channels having an essentially circular cross-section, but for a gap in the circular cross-section that can narrow under load to form a closed channel.

Examiner disagrees, since Ogden teaches a climate channel (36) having an essentially circular cross-section (see figures 4A, 4B). The cross-section of portions 36 form an essentially circular cross-section, but for a gap in the circular cross-section (see figures 4A, 4B). The gap in the circular cross-section can narrow under a load to form a closed channel, based upon the load applied angle to the climate channel.

V) Applicant argues that Ogden in view of Lambertz does not disclose a motivation to create a sock garment with air channels, climate channels and a central channel.

In KSR, the Supreme Court indicated that "[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability." KSR Int'l v. Teleflex Inc., 127 S. Ct. 1727, 1740 (2007).

Here, Ogden teaches a sock garment with climate and central channels on the sock tread. Lambertz teaches a sock garment having an air channel.

It would have been obvious to one having ordinary skill in the apparel arts to combine one structure from a sock garment and apply it to another sock garment. The combination of the air channel of Lambertz to the climate and central channel sock of

Ogden would create a sock that provides frictional engagement with a user's foot while transporting moisture from the tread area.

### ***Conclusion***

11. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa L. Hoey/  
Primary Examiner, Art Unit 3765